

107TH CONGRESS
2D SESSION

S. 1913

To amend title 5, United States Codes, to establish an exchange program between the Federal Government and the private sector to develop expertise in information technology management, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2002

Mr. VOINOVICH introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend title 5, United States Codes, to establish an exchange program between the Federal Government and the private sector to develop expertise in information technology management, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Digital Tech Corps Act of 2002”.

6 (b) FINDINGS.—Congress finds that—

1 (1) unless action is taken soon, there will be a
2 crisis in government's ability to deliver essential
3 services to the American people;

4 (2) by 2006, over 50 percent of the Federal
5 Government's information technology workforce will
6 be eligible to retire, creating a huge demand in gov-
7 ernment for high-skill workers;

8 (3) despite a 44 percent decrease in the demand
9 for information technology workers in the private
10 sector, the Information Technology Association of
11 America reports that employers will need to fill over
12 900,000 new information technology jobs and will be
13 unable to find qualified workers for 425,000 of those
14 jobs;

15 (4) to highlight the urgency of this situation, in
16 January 2001, the General Accounting Office added
17 the Federal Government's human capital manage-
18 ment to its list of high-risk problems for which an
19 effective solution must be found;

20 (5) despite efforts to increase flexibility in Fed-
21 eral agencies' employment practices, compensation
22 issues continue to severely restrain recruitment for
23 Government agencies;

24 (6) failures in the Federal Government employ-
25 ment process are accelerating efforts by agencies to

1 implement outsourcing as a short-term solution to
 2 skill gaps, further unbalancing efforts to reach the
 3 proper government versus contractor mix of manage-
 4 ment and skills; and

5 (7) an effective, efficient, and economical re-
 6 sponse to this crisis would be to create a vibrant, on-
 7 going exchange effort designed to share talent, ex-
 8 pertise, and advances in management between lead-
 9 ing-edge businesses and government agencies en-
 10 gaged in best practices.

11 **SEC. 2. INFORMATION TECHNOLOGY EXCHANGE PROGRAM.**

12 (a) IN GENERAL.—Subpart B of part III of title 5,
 13 United States Code, is amended by adding at the end the
 14 following:

15 **“CHAPTER 37—INFORMATION**
 16 **TECHNOLOGY EXCHANGE PROGRAM**

“Sec.

“3701. Definitions.

“3702. General provisions.

“3703. Assignment of employees to private sector organizations.

“3704. Assignment of employees from private sector organizations.

“3705. Authority of the Office of Personnel Management.

17 **“§ 3701. Definitions**

18 “For purposes of this chapter—

19 “(1) the term ‘agency’ means an Executive
 20 agency, but does not include the General Accounting
 21 Office;

22 “(2) the term ‘detail’ means—

1 “(A) the assignment or loan of an em-
 2 ployee to a private sector organization without
 3 a change of position from the agency by which
 4 the individual is employed; and

5 “(B) the assignment or loan of an em-
 6 ployee of a private sector organization to an
 7 agency without a change of position from the
 8 private sector organization that employs the in-
 9 dividual; and

10 “(3) the term ‘transfer’ means the change of
 11 position by an employee from an agency to a private
 12 sector organization or from a private sector organi-
 13 zation to an agency.

14 **“§ 3702. General provisions**

15 “(a) On request from or with the agreement of a pri-
 16 vate sector organization, and with the consent of the em-
 17 ployee concerned, the head of an agency may arrange for
 18 the assignment of an eligible employee of the agency to
 19 a private sector organization or an eligible employee of a
 20 private sector organization to the agency. An eligible em-
 21 ployee is an individual employed at the GS–12 level or
 22 above (or equivalent) who—

23 “(1) works in the field of information tech-
 24 nology management

1 “(2) is considered an exceptional performer by
2 the individual’s current employer; and

3 “(3) is expected to assume increased informa-
4 tion technology management responsibilities in the
5 future.

6 An employee of an agency shall be eligible to participate
7 in this program only if the employee is serving under a
8 career or career-conditional appointment or an appoint-
9 ment of equivalent tenure in the excepted service.

10 “(b) Each agency that exercises its authority under
11 this chapter shall establish a plan for implementing this
12 authority. The plan shall provide for a written agreement
13 between the agency and the employee concerned regarding
14 the terms and conditions of the employee’s assignment.
15 In the case of an employee of the agency, the agreement
16 shall—

17 “(1) require the employee to serve in the civil
18 service, upon completion of the assignment, for a pe-
19 riod equal to the length of the assignment; and

20 “(2) provide that, in the event the employee
21 fails to carry out the agreement (except for good and
22 sufficient reason, as determined by the head of the
23 agency from which assigned) the employee shall be
24 liable to the United States for payment of all ex-
25 penses (excluding salary) of the assignment. The

1 amount shall be treated as a debt due the United
2 States.

3 “(c) Assignments may be terminated by the agency
4 or private sector organization concerned for any reason
5 at any time.

6 “(d) Assignments under this chapter shall be for 1
7 year and may be extended for an additional period not
8 to exceed 1 year.

9 “(e) The Chief Information Officers Council, by
10 agreement with the Office of Personnel Management, may
11 assist in the administration of this chapter, including by
12 maintaining lists of potential candidates for assignment
13 under this chapter, establishing mentoring relationships
14 for the benefit of individuals who are given assignments
15 under this chapter, and publicizing the program.

16 **“§ 3703. Assignment of employees to private sector or-**
17 **ganizations**

18 “(a) An employee of an agency may be assigned to
19 a private sector organization under this chapter either—

20 “(1) as a detail to a regular work assignment;
21 or

22 “(2) as a transfer to the private sector organi-
23 zation.

24 “(b) Notwithstanding any other provision of law, an
25 employee assigned under subsection (a) is entitled—

1 “(1) to receive supplemental pay from the agen-
2 cy in the amount equal to the difference between the
3 rate paid by the organization to which detailed or
4 transferred and the rate of basic pay (including lo-
5 cality pay, where applicable, subject to regulations of
6 the Office of Personnel Management) payable for
7 the employee’s Federal position, if the latter is
8 greater;

9 “(2) in the case of an employee who is detailed
10 under subsection (a)(1), to credit for the period of
11 assignment under this chapter toward periodic step
12 increases, retention, and leave accrual;

13 “(3) to retain coverage, rights, and benefits
14 under chapters 87 and 89, if necessary employee de-
15 ductions and agency contributions for the period of
16 the assignment are currently deposited in the Em-
17 ployees’ Life Insurance Fund and the Employees
18 Health Benefits Fund, respectively, and the period
19 of the assignment is deemed service as an employee
20 under chapters 87 and 89;

21 “(4) to retain coverage, rights, and benefits
22 under any system established by law for the retire-
23 ment of employees, if necessary employee deductions
24 and agency contributions in payment for the cov-
25 erage, rights, and benefits for the period of assign-

1 ment are currently deposited in the system's fund;
2 and the period of the assignment is deemed cred-
3 itable under the system, except that such service
4 shall not be considered creditable service for the pur-
5 pose of any retirement system for Federal employees
6 if such service forms the basis, in whole or in part,
7 for an annuity or pension under the retirement sys-
8 tem of the private sector organization; and

9 “(5) to retain coverage, rights, and benefits
10 under subchapter I of chapter 81, and employment
11 during the assignment is deemed employment by the
12 United States, but if the employee or the employee's
13 dependents receive from the private sector organiza-
14 tion any payment under an insurance policy for
15 which the premium is wholly paid by the private sec-
16 tor organization, or other benefit of any kind on ac-
17 count of the same injury or death, the amount of
18 such payment or benefit shall be credited against
19 any compensation otherwise payable under sub-
20 chapter I of chapter 81.

21 During the employee's assignment to the private sector or-
22 ganization, the agency from which the employee is detailed
23 or transferred shall make contributions for retirement and
24 insurance purposes from the appropriations or funds of

1 that agency so long as contributions are made by the em-
2 ployee.

3 “(c) The detail of an employee of an agency under
4 subsection (a)(1) may be made with or without reimburse-
5 ment by the private sector organization for the travel and
6 transportation expenses to or from the place of assign-
7 ment, subject to the same terms and conditions that apply
8 with respect to an employee of a Federal agency or a State
9 or local government under section 3375, and for the pay,
10 or supplemental pay, or any part thereof of the employee
11 during assignment. Any reimbursements shall be credited
12 to the appropriation of the agency used for paying the
13 travel and transportation expenses or pay.

14 “(d) An employee assigned on detail under subsection
15 (a)(1) remains an employee of the agency from which de-
16 tailed. The Federal Tort Claims Act and any other Fed-
17 eral tort liability statute apply to the employee. The super-
18 vision of the duties of an employee on detail may be gov-
19 erned by an agreement between the agency and the organi-
20 zation to which detailed.

21 “(e)(1) Notwithstanding any other provision of law,
22 an employee detailed under subsection (a)(1) is entitled
23 to accrue annual and sick leave to the same extent as if
24 the employee had continued working in the position from
25 which detailed.

1 “(2) An employee who transfers to a private sector
 2 organization under subsection (a)(2) may elect to retain
 3 credit for all accumulated and currently accrued annual
 4 leave to which entitled at the time of transfer which other-
 5 wise would be liquidated by a lump-sum payment. At the
 6 employee’s request at any time before returning to the
 7 agency, the employee shall be paid for the annual leave
 8 retained. Upon completion of the assignment under this
 9 chapter, the agency shall restore the employee’s sick leave
 10 account to its status at the time of transfer.

11 **“§ 3704. Assignment of employees from private sector**
 12 **organizations**

13 “(a) Notwithstanding any other provision of law, an
 14 employee of a private sector organization who is assigned
 15 to an agency under section 3702(a) may be—

16 “(1) transferred to the agency and appointed
 17 without regard to the provisions of this title gov-
 18 erning appointment in the competitive service for the
 19 period of assignment; or

20 “(2) detailed to the agency.

21 “(b) An individual appointed under subsection (a)(1)
 22 is entitled to pay in accordance with chapter 51 and sub-
 23 chapter III of chapter 53 or other applicable law, and is
 24 deemed an employee of the agency for all purposes
 25 except—

1 “(1) subchapter III of chapter 83, chapter 84,
2 or other applicable retirement system;

3 “(2) chapter 87; and

4 “(3) chapter 89 or other applicable health bene-
5 fits system unless the appointment results in the
6 employee’s loss of coverage in a group health bene-
7 fits plan the premium of which has been paid in
8 whole or in part by the private sector organization.

9 The exceptions set forth in paragraphs (1) through (3)
10 shall not apply to non-Federal employees who are covered
11 by chapters 83, 84, 87, and 89 by virtue of their non-
12 Federal employment immediately before appointment
13 under subsection (a)(1).

14 “(c) An employee of a private sector organization who
15 is detailed to an agency under subsection (a)(2)—

16 “(1) is not entitled to pay from the agency, ex-
17 cept to the extent that the pay for the position to
18 which detailed (including locality pay, where applica-
19 ble) exceeds the pay the individual was receiving
20 from the private sector organization immediately be-
21 fore the detail;

22 “(2) may continue to receive pay and benefits
23 from the private sector organization from which he
24 is detailed;

1 “(3) is deemed an employee of the agency for
2 the purposes of—

3 “(A) chapter 73, except for section
4 7353(a)(1);

5 “(B) sections 203, 205, 207, 208, 603,
6 606, 607, 643, 654, 1905, and 1913 of title 18;

7 “(C) sections 1343, 1344, and 1349(b) of
8 title 31;

9 “(D) the Federal Tort Claims Act and any
10 other Federal tort liability statute;

11 “(E) the Ethics in Government Act of
12 1978 (5 U.S.C. App.);

13 “(F) section 1043 of the Internal Revenue
14 Code of 1986, as amended (26 U.S.C. 1043);
15 and

16 “(G) section 27(p)(8) of the Office of Fed-
17 eral Procurement Policy Act (41 U.S.C.
18 423(p)(8)); and

19 “(4) is subject to such regulations as the Presi-
20 dent may prescribe.

21 The supervision of an employee who is detailed under sub-
22 section (a)(2) may be governed by agreement between the
23 agency and the private sector organization concerned. A
24 detail under subsection (a)(2) may be made with or with-
25 out reimbursement by the agency for the pay, or a part

1 thereof, of the employee during the period of assignment,
2 or for any contribution of the private sector organization
3 to employee benefit systems.

4 “(d) If a private sector organization fails to continue
5 the employer’s contribution to private sector retirement,
6 life insurance, and health benefit plans for an individual
7 who is appointed in an agency under this section, the em-
8 ployer’s contributions covering the period of the assign-
9 ment may be made from the appropriations of the agency
10 concerned.

11 “(e) A private sector employee who is given an as-
12 signment in an agency under subsection (a) and who suf-
13 fers disability or dies as a result of personal injury sus-
14 tained while performing duties during the assignment
15 shall be treated, for the purpose of subchapter I of chapter
16 81, as an employee as defined by section 8101 who had
17 sustained the injury in the performance of duty, except
18 that if the employee or the employee’s dependents receive
19 from the private sector organization any payment under
20 an insurance policy for which the premium is wholly paid
21 by the private sector organization, or other benefit of any
22 kind on account of the same injury or death, the amount
23 of such payment or benefit shall be credited against any
24 compensation otherwise payable under subchapter I of
25 chapter 81.

1 **“§ 3705. Authority of the Office of Personnel Manage-**
 2 **ment**

3 “The Director of the Office of Personnel Manage-
 4 ment shall prescribe regulations for the administration of
 5 this chapter.”.

6 (b) CLERICAL AMENDMENT.—The analysis for part
 7 III of title 5, United States Code, is amended by inserting
 8 after the item relating to chapter 35 the following:

“37. Information Technology Exchange Program.”.

9 **SEC. 3. ALLOWABILITY OF COSTS.**

10 Within 120 days after the enactment of this Act, the
 11 Federal Acquisition Regulations Council shall amend the
 12 Federal Acquisition Regulation to recognize the costs as-
 13 sociated with an employee’s participation in the program
 14 authorized by section 2 as allowable training and edu-
 15 cation costs. Such costs—

16 (1) include the employee’s salary and fringe
 17 benefits for a period not to exceed the period of the
 18 employee’s assignment under the program author-
 19 ized by section 2, as well as moving and travel ex-
 20 penses; and

21 (2) may be treated, for accounting purposes—

22 (A) as an indirect cost and accounted for
 23 in—

24 (i) an established overhead account; or

- 1 (ii) an overhead account established
 2 specifically for the program authorized by
 3 section 2 and allocated exclusively to the
 4 contractor’s Federal Government contracts;
 5 or
 6 (B) as a direct cost chargeable to fixed
 7 price or time and material contracts.

8 **SEC. 4. CONFORMING AMENDMENTS.**

- 9 (a) Title 5, United States Code, is amended—
 10 (1) in section 3111 by adding at the end the
 11 following:
 12 “(d) Notwithstanding section 1342 of title 31, the
 13 head of an agency may accept voluntary service for the
 14 United States under chapter 37 of this title and regula-
 15 tions of the Office of Personnel Management.”; and
 16 (2) in section 4108 by striking subsection (d).
 17 (b) Section 125(c)(1) of Public Law 100–238 (5
 18 U.S.C. 8432 note) is amended—
 19 (1) in subparagraph (B) by striking “or” at the
 20 end;
 21 (2) in subparagraph (C) by striking “and” at
 22 the end and inserting “or”; and
 23 (3) by adding at the end the following:
 24 “(D) an individual assigned from a Fed-
 25 eral agency to a private sector organization

- 1 under chapter 37 of title 5, United States Code;
- 2 and”.

